

Section 3.13

Tribal Cultural Resources

This section addresses the proposed project's potential impacts in relation to tribal cultural resources. Cultural resources include places, objects, and settlements that reflect group or individual religious, archaeological, architectural, or paleontological activities. By statute, "tribal cultural resources," are generally described as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe and are further defined in PRC Section 21074(a)(1)(A)–(B). Tribal cultural resources are generally described as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe and are further defined in PRC Section 21074(a)(1)(A)–(B).

The analysis in this section is based on the *Cultural Resources Inventory and Evaluation Report* (2020b) prepared by ECORP Consulting, Inc. (ECORP) and peer reviewed by Michael Baker International, the City of Encinitas, and consultation with the San Luis Rey Band of Mission Indians. Due to the sensitive and confidential nature of cultural resources, portions of the report have been redacted ([Appendix E](#)). The analysis herein is further based on the *City of Encinitas General Plan* (1991) and the *City of Encinitas 2013-2021 Housing Element Update Environmental Assessment* (2018a).

ENVIRONMENTAL SETTING

The project site is located in the City of Encinitas, along a coastal ridge within a highly developed, suburban neighborhood setting. The site lies approximately 1.4 miles east of the Pacific Ocean and 1.4 miles south of Batiquitos Lagoon. On-site elevations range from approximately 300 to 320 feet above mean sea level.

The project site is located on a ridge just to the south of a natural drainage. The underlying geology of the project area has been mapped as very old paralic deposits, Units 10 and 11, dated back to the Early to Middle Pleistocene (2.588–0.126 Ma).¹ Native on-site soils are described as poorly sorted, moderately permeable, reddish-brown, interfingered strandline, beach, estuarine, and colluvial deposits composed of siltstone, sandstone, and conglomerate (ECORP 2020b). These geological deposits are typical of near-coastal ridges and bluffs in San Diego County, whereas the older stratigraphy of the Santiago Formation (Middle Eocene 47.8–37.8 Ma) may be found in the drainage below the ridge.

Four soil types are located within the project area: Carlsbad gravelly loam sand, 2 to 5 percent slopes; Chesterton fine sandy loam, 2 to 5 percent slopes; Cinebar coarse sandy loam, 5 to 15

¹ Paralic: Formed in, occurring in, or inhabiting shallow water near the sea; ma: megaannum, or one million years.

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percent slopes; and rough broken land at the northeastern edge of the project area where erosion of the terrace has taken place (ECORP 2020b).

The potential for buried pre-contact archaeological sites in the project area does exist due to proximity to the Pacific Ocean. Additionally, the region is recognized to have been in regular use by Native Americans for thousands of years. The drainage located to the north of the site also contributes to this potential as pre-contact archaeological sites have been identified along perennial and intermittent waterways in the region.

Cultural Resources Inventory Results

Records Search

The area of potential effect (APE) represents the area that would be affected by project development, and therefore, could be subject to potential direct or indirect impacts on cultural resources if such resources are determined to be present. The boundaries of the APE analyzed include areas proposed for construction, vegetation removal, grading, trenching, stockpiling, staging, paving, and other such disturbance. Refer to Figure 2, Project Location, of the *Cultural Resources Inventory and Evaluation Report*.

A records search was conducted in February 2020 for the APE and a surrounding 1-mile radius at the South Coastal Information Center (SCIC), part of the California Historical Resources Information System (CHRIS) maintained by the Office of Historic Preservation, at San Diego State University.

The CHRIS records search determined that 21 previously recorded cultural resources are located within one mile of the project area; refer to Table 1, Previously Recorded Cultural Resources In or Within One Mile of the Project Site, of the *Cultural Resources Inventory and Evaluation Report*. Resources comprise a mix of habitation/camp sites, shell middens, shell and lithic scatter, lithic tools, and ceramic potsherds; two historic-period houses and a trash deposit; and a pre-contact habitation site and a historic-period farmstead. No previously recorded resources are located within the project area.

Sacred Lands File Results

The California Native American Heritage Commission (NAHC) identifies, catalogs, and protects Native American cultural resources on private and public lands in California. Cultural resources include graves, cemeteries, and places of special religious or social significance to Native Americans. The NAHC also records the historical territories of state recognized tribes into a database called the Sacred Lands File. A records search of the Sacred Lands File is conducted to ensure that the tribes potentially affected by a project are properly notified and consulted.

A search of the Sacred Lands File in March 2020 did not identify any sacred lands within the project boundary (ECORP 2020b). However, the absence of specific site information does not necessarily indicate the absence of cultural resources in the project area as unknown cultural resources may be located on-site.

Field Survey Results

A site survey was conducted in March 2020. During the survey, it was noted that the majority of the project area was currently developed with artificial paving, other modern permanent structures, and modern built environment features that obscure any native soils or surfaces. The project site currently supports a commercial agricultural use consisting of greenhouses, flower processing stations, and other appurtenant features (refer to [Appendix E](#)). Visibility of open areas on-site was good (approximately 80 to 100 percent); however, these areas consisted of paved roadways, graded dirt roads, and artificial dirt drainages within the property. Additionally, visible soils are either imported fill or highly disturbed local material that has been graded or transported to the project site.

No tribal cultural resources were identified as a result of the field survey; however, two historic-period cultural resources were identified during the survey (refer to Section 3.4, Cultural Resources).

REGULATORY FRAMEWORK

State

Assembly Bill 52

California Assembly Bill (AB) 52 (2014) established a formal consultation process for California tribes in the CEQA process. The bill specifies that any project that may affect or cause a substantial adverse change to the significance of a tribal cultural resource would require a lead agency to “begin consultation with a California Native American tribe that is traditional and culturally affiliated with the geographic area of the proposed project.” A tribal cultural resource is defined as a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is:

- Listed or eligible for listing in the California Register of Historical Resources or a local register of historical resources;
- Determined by the lead agency to be significant pursuant to criteria set forth in PRC Section 5024.1;

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- A geographically defined cultural landscape that meets one or more of these criteria; or
- A historical resource described in PRC Section 21084.1, a unique archaeological resource described in PRC Section 21083.2, or is a non-unique archaeological resource if it conforms with the above criteria.

AB 52 provides guidance for consultation between California Native American tribes and lead agencies to address potential impacts of development activities on known or unknown tribal cultural resources and to identify appropriate mitigation for such impacts. PRC Section 21074(a) defines tribal cultural resources, indicating that a project having the potential to cause a substantial adverse change to a tribal cultural resource is a project that may have an adverse environmental effect.

Under AB 52, tribes that wish to be notified of projects subject to CEQA are to send a letter to the lead agency making it known they wish to be notified. The City is then obligated to send notifications inviting consultation to the requesting tribe for all subsequent projects subject to CEQA.

California Native American Graves Protection and Repatriation Act

The California Native American Graves Protection and Repatriation Act (25 U.S. Code 3001 et seq.) was enacted in 2001. Pursuant to the act, federal and state institutions and museums that receive federal funding and having possession or responsibility for collections of human remains or cultural artifacts are required to return Native American cultural items to their respective peoples. In addition, the act establishes a program of federal grants to assist in the repatriation process and authorizes the Secretary of the Interior to assess civil penalties on museums that fail to comply.

California Health and Safety Code Sections 7050.5, 7051, and 7054

California Health and Safety Code Sections 7050.5, 7051, and 7054 collectively address the illegality of interference with human burial remains as well as the disposition of Native American burials in archaeological sites. The law protects such remains from disturbance, vandalism, or inadvertent destruction and establishes procedures to be implemented if Native American skeletal remains are discovered during construction of a project, including the treatment of remains prior to, during, and after evaluation, and reburial procedures.

Local

City of Encinitas General Plan

Resource Management Element

The Resource Management Element of the General Plan addresses both archaeological and historical cultural resources. The element includes maps of the City identifying areas of low, moderate, and high cultural resource sensitivity. The element identifies mitigation procedures for archaeological sites discovered during the excavation or construction phases of a new project. It also calls for an inventory of all historically significant sites and/or structures that require protection.

The following goal and policies are relevant in protecting tribal, cultural, and paleontological resources in the City.

GOAL 7: **The City will make every effort to ensure significant scientific and cultural resources in the Planning Area are preserved for future generations.**

Policy 7.1: Require that paleontological, historical and archaeological resources in the planning area are documented, preserved or salvaged if threatened by new development.

Policy 7.2: Conduct a survey to identify historic structures and archaeological/cultural sites throughout the community and ensure that every action is taken to ensure their preservation.

City of Encinitas Municipal Code

Section 30.34.050, Cultural/Natural Resources Overlay Zone, of the City's Municipal Code (Chapter 30.34, Special Purpose Overlay Zones) includes regulations that apply to areas within the Special Study Overlay Zone where site-specific analysis indicates the presence of sensitive cultural, historic, and biological resources, including sensitive habitats. For parcels containing archaeological or historical sites, the Municipal Code requires a site resource survey and impact analysis to determine the significance of, and possible mitigation for, sensitive resources.

IMPACT ANALYSIS AND MITIGATION MEASURES

Thresholds of Significance

The following thresholds of significance are based on CEQA Guidelines Appendix G. For the purposes of this EIR, the project would be considered to have a significant impact on tribal cultural resources if it would:

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1. Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:
 - Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC Section 5020.1(k), or
 - A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

PROJECT IMPACTS AND MITIGATION**TRIBAL CULTURAL RESOURCES**

Impact 3.13-1 The project could cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe. Impacts would be less than significant with mitigation incorporated.

The NAHC was contacted to request a search of the Sacred Lands File in March 2020. The record search did not identify any sacred lands within the project boundary (ECORP 2020b). However, the absence of specific site information does not necessarily indicate the absence of cultural resources in the project area as unknown cultural resources may be located on-site.

The San Luis Rey Band of Mission Indians have requested notification of CEQA projects in the City per AB 52. The Tribe has noted that the properties adjacent to the Batiquitos lagoon are within their sphere-of-influence. The proposed project is located approximately 1.5 miles south from the lagoon.

In August 2020, the City initiated the consultation process in writing with the Tribe and is awaiting a response.

No tribal cultural resources have been identified in the project boundary. If no tribal cultural resources are identified during the consultation process, a significant impact to known tribal cultural resources would not occur. However, subsurface construction disturbances (e.g.,

trenching, excavation, grading) associated with the proposed project would have the potential to impact unknown tribal cultural resources.

To ensure proper protection of any unknown resources, should they be encountered during project-related ground disturbance activities, Native American monitoring is required. Monitoring would allow for any discovery of unknown resources to be readily managed in accordance with federal and state law to prevent potential damage (refer to mitigation measure **CR-1** to **CR-3**). With implementation of mitigation measures **CR-1** to **CR-3**, impacts would be **less than significant with mitigation incorporated**.

Mitigation Measures: The mitigation measures for Impact 3.13-1 are the same as mitigation measures **CR-1** to **CR-3**, which were previously described under Impact 3.4-2 of this EIR. Mitigation measures **CR-1** to **CR-3** are repeated in this section for the reader's convenience.

CR-1 Cultural Resources Monitoring Program. A Cultural Resource Mitigation Monitoring Program shall be conducted to provide for the identification, evaluation, treatment, and protection of any cultural resources that are affected by or may be discovered during the construction of the proposed project. The monitoring shall consist of the full-time presence of a qualified archaeologist and a traditionally and culturally affiliated (TCA) Native American monitor (San Luis Rey Band of Mission Indians) shall be retained to monitor all ground-disturbing activities associated with project construction, including vegetation removal, clearing, grading, trenching, excavation, or other activities that may disturb original (pre-project) ground, including the placement of imported fill materials and related roadway improvements (i.e., for access).

- The requirement for cultural resource mitigation monitoring shall be noted on all applicable construction documents, including demolition plans, grading plans, etc.
- The qualified archaeologist and TCA Native American monitor shall attend all applicable pre-construction meetings with the Contractor and/or associated Subcontractors.
- The qualified archaeologist shall maintain ongoing collaborative consultation with the TCA Native American monitor during all ground disturbing or altering activities, as identified above.
- The qualified archaeologist and/or TCA Native American monitor may halt ground disturbing activities if archaeological artifact deposits or cultural features are discovered. In general, ground disturbing activities shall be

directed away from these deposits for a short time to allow a determination of potential significance, the subject of which shall be determined by the qualified archaeologist and the TCA Native American monitor, in consultation with the San Luis Rey Band of Mission Indians ("San Luis Rey Band"). Ground disturbing activities shall not resume until the qualified archaeologist, in consultation with the TCA Native American monitor, deems the cultural resource or feature has been appropriately documented and/or protected. At the qualified archaeologist's discretion, the location of ground disturbing activities may be relocated elsewhere on the project site to avoid further disturbance of cultural resources.

- The avoidance and protection of discovered unknown and significant cultural resources and/or unique archaeological resources is the preferable mitigation for the proposed project. If avoidance is not feasible a Data Recovery Plan may be authorized by the City as the lead agency under CEQA. If a data recovery is required, then the San Luis Rey Band shall be notified and consulted in drafting and finalizing any such recovery plan.
- The qualified archaeologist and/or TCA Native American monitor may also halt ground disturbing activities around known archaeological artifact deposits or cultural features if, in their respective opinions, there is the possibility that they could be damaged or destroyed.
- The landowner shall relinquish ownership of all tribal cultural resources collected during the cultural resource mitigation monitoring conducted during all ground disturbing activities, and from any previous archaeological studies or excavations on the project site to the San Luis Rey Band for respectful and dignified treatment and disposition, including reburial, in accordance with the Tribe's cultural and spiritual traditions. All cultural materials that are associated with burial and/or funerary goods will be repatriated to the Most Likely Descendant as determined by the Native American Heritage Commission per California Public Resources Code Section 5097.98.

CR-2

Prepare Monitoring Report and/or Evaluation Report. Prior to the release of the Grading Bond, a Monitoring Report and/or Evaluation Report, which describes the results, analysis and conclusions of the cultural resource mitigation monitoring efforts (such as, but not limited to, the Research Design and Data Recovery Program) shall be submitted by the qualified archaeologist, along with the TCA

Native American monitor's notes and comments, to the City's Development Services Director for approval.

CR-3 Identification of Human Remains. As specified by California Health and Safety Code Section 7050.5, if human remains are found on the project site during construction or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the San Diego County Coroner's office by telephone. No further excavation or disturbance of the discovery or any nearby area reasonably suspected to overlie adjacent remains (as determined by the qualified archaeologist and/or the TCA Native American monitor) shall occur until the Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code 5097.98. If such a discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected (as determined by the qualified archaeologist and/or the TCA Native American monitor), and consultation and treatment could occur as prescribed by law. As further defined by state law, the Coroner would determine within two working days of being notified if the remains are subject to his or her authority. If the Coroner recognizes the remains to be Native American, he or she shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC would make a determination as to the Most Likely Descendent. If Native American remains are discovered, the remains shall be kept in situ ("in place"), or in a secure location in close proximity to where they were found, and the analysis of the remains shall only occur on-site in the presence of the TCA Native American monitor.

Level of Significance: Less than significant with mitigation incorporated.

CUMULATIVE IMPACTS

Impact 3.13-2	The project could result in cumulative impacts related to tribal cultural resources. Impacts would be less than cumulatively considerable with mitigation incorporated.
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Geographic Scope

Relative to CEQA, the importance of a tribal cultural resource is the value of the resource to California Native American tribes culturally affiliated with a certain project area. On a cumulative level, the cumulative loss of the tribal cultural resource must therefore be evaluated. No impact would occur if development would avoid or otherwise preserve known tribal cultural resources

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within dedicated on-site open space. However, if such resources cannot be avoided or preserved, an impact would occur, and consideration of how the loss of the resource, in combination with other tribal cultural resources, is included in this cumulative analysis.

Cumulative projects that would have the potential to be considered in a cumulative context with the proposed project's incremental contribution, and that are included in the analysis of cumulative impacts relative to cultural resources, are identified in [Table 3.0-1](#) and [Figure 3.0-1](#) in [Section 3.0](#) of this EIR. Additionally, to be conservative, the cumulative analysis is based on the "worst-case" assumption that all 2019 HEU sites develop under maximum density bonus unit allowances. The cumulative impact analysis includes all 2019 HEU sites to the extent they may contribute to certain issue-specific cumulative effects and conservatively assumes the remaining 12 HEU sites (those sites other than the proposed project and the two HEU sites currently being processed) would apply the density bonus allowance to achieve a maximum density of residential units (see [Table 3.0-2](#)).

Potential Cumulative Impacts

Urban development that has occurred over past decades in San Diego County has resulted in adverse impacts on innumerable tribal cultural resources. However, the adoption of state and federal laws related to tribal cultural resources, such as AB 52, have provided a mechanism for consultation between California Native American tribes and lead agencies to address potential impacts of development activities on known and/or unknown tribal cultural resources. Although inadvertent discoveries and potential impacts may still result on a project by project basis based on location, development type, and availability of data, compliance with regulatory procedures generally mitigate potential impacts to tribal cultural resources. Federal, state, and local laws protect tribal cultural resources in most instances, but this is not always feasible, particularly when in-place preservation may complicate the implementation of a development project. Future development may conflict with these resources through inadvertent destruction or removal resulting from grading, excavation, and/or construction activities.

Although no known tribal cultural resources of significance or human remains have been documented on the project site, implementation of the proposed project could contribute to potential cumulative impacts on unknown tribal cultural resources, as well as buried human remains. Past, present, and foreseeable projects have affected, or would have the potential to affect, tribal cultural resources throughout the region over time. However, there are federal, state, and local laws designed to protect such resources. These laws have led to the discovery, recordation, preservation, and curation of artifacts and historic structures.

The proposed project would implement mitigation measures **CR-1 to CR-3**, which address the discovery and recovery of unknown tribal cultural resources through construction monitoring,

identification of potential tribal cultural resources, and evaluation of the significance of a discovery. Mitigation measures would be implemented to reduce potential impacts from project construction on undiscovered resources, if encountered, to less than significant. Similarly, with conformance to applicable federal, state, and local regulations, combined with the implementation of mitigation, it is anticipated that other cumulative development projects would be adequately addressed and impacts on tribal cultural resources would be reduced to the extent feasible.

Therefore, individual project-level impacts associated with tribal cultural resources would be less than significant with incorporation of mitigation measures **CR-1 to CR-3** and the proposed project and cumulative projects would be subject to conformance with applicable federal, state, and local requirements for the protection of such resources. Therefore, the proposed project's contribution to impacts on tribal cultural resources is considered **less than cumulatively considerable**.

Mitigation Measures: Implement mitigation measures **CR-1 to CR-3**.

Level of Significance: Less than cumulatively considerable.

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